

DUNCAN MILLER

IBLA 71-197

Decided May 10, 1971

Oil and Gas Leases: Known Geological Structure

One who attacks a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing.

Oil and Gas Leases: Competitive Leases – Oil and Gas Leases: Known Geological Structure

All lands determined by a finding of the Geological Survey to be within the known geologic structure of a producing oil or gas field may only be leased to the public through competitive bidding.

Oil and Gas Leases: Reinstatement

It is proper to deny reinstatement of an oil and gas lease where a suit against the Secretary seeking review of a decision terminating the lease is dismissed with prejudice.

IBLA 71-197	:	NM-A 022266 (Okla.)
	:	NM-A 022266-B (Okla.) and
	:	NM 094388 (Okla.)
DUNCAN MILLER	:	
	:	Protest against issuance
	:	of competitive oil and gas
	:	lease dismissed; request
	:	for reinstatement of
	:	terminated leases denied.
	:	
	:	Affirmed

DECISION

Duncan Miller has appealed from a decision of the Division of Lands and Minerals, New Mexico state office, dated January 21, 1971, wherein his protest against the leasing by competitive bidding, of certain lands in T. 23 N., R. 22 W., I.M., Oklahoma, previously held by him, was dismissed and his request for reinstatement of leases formerly held by him for that land was denied.

Miller formerly held leases NM-A 022266 (Okla.), NM-A 022266-B (Okla.) and NM 094338 (Okla.). All or part of the lands in each lease was later determined to be within the known geologic structure of a producing oil and gas field. In separate proceedings the land office held that each lease had terminated by operation of law for failure to pay rental when due. On appeal to the Secretary, it was held that the terminations were proper. Duncan Miller, A-30684 (January 19, 1967); Duncan Miller, A-30628 (November 16, 1966); Duncan Miller, A-30547 (July 20, 1966).

Appellant thereupon filed suit in the United States District Court for the District of New Mexico seeking judicial review of the adverse decisions concerning the three leases. On August 28, 1968, the court ordered that the action be dismissed with prejudice against Miller for his failure to appear at the time of trial. Miller v. Udall, Civ. No. 7334 (D.N.M. August 28, 1968).

Pursuant to an earlier notice, the lands included within the three leases, all being acquired lands, were offered for leasing through competitive bidding on January 19, 1971. On December 18, 1970, Miller filed his protest against this action and his request for reinstatement of his leases. On January 21, 1971, the protest and request were dismissed by the Santa Fe land office. The decision noted that all matters regarding Miller's interest in the three leases had been fully litigated and that the dismissal of his suit in the United States District Court barred any additional administrative review. It further noted that the appellant's protest was based upon regulation 43 CFR 3123.7 (now, as amended 43 CFR 3110.1-6(a); 35 F.R. 9689), which provides in pertinent part that no lease shall be issued before final action is taken on a petition for reinstatement of an existing or former lease on the land. The land office noted that the provision dealt with noncompetitive leases, while the section dealing with competitive leases, 43 CFR Subpart 3124 (now 43 CFR Subpart 3120, 35 F.R. 9692), under which the three here in question fall had no similar provision. Thus, it held appellant's argument to be invalid.

Miller has appealed from that decision. As a result of the District Court's order, which has become final, Miller's leases must be held to have been properly terminated. Accordingly, his request that they be reinstated was properly denied. Miller, however, bases his appeal upon the theory that "... the Geological Survey submitted a determination that the leases were in a known geological structure; without, ever citing to this Appellant-Lessee any evidence to support their determination or informing the reasons therefor."

This issue was raised by Miller in all the proceedings involving the terminated leases and was held to be without merit. In these and other cases the Department has held that it will not change a determination by the Geological Survey that a tract of land is within a known geologic structure of a producing oil and gas field upon the mere assertion by a lessee or other objector that the determination is in error without the submission of sufficient information to justify change in this determination. Andrea R. Greyber, A-31040 (December 19, 1969).

Accordingly, in the absence of any such demonstration, the land office properly offered the land for competitive leasing. 43 CFR § 3120.1-3(a), 35 F.R. 9693, (amending 43 CFR 3124.2).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed for the above-stated reasons.

Martin Ritvo, Member

We concur.

Edward W. Stuebing, Member

Frederick Fishman, Member.

